No. 8111

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

14

In the Matter of
JOSEPH H. GRANDE,
Bankrupt.

JOSEPH H. GRANDE,
Appellant,

vs.

ARIZONA WAX PAPER COMPANY and
STATE PRODUCE EXCHANGE,
Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

FILED
DEC 14 1936
PAUL P. O'BRIEN,
CLERK

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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For Appellant:

JAMES DONOVAN, Esq.,

417 South Hill Street,

Los Angeles, California.

For Appellee:

BENJAMIN W. SHIPMAN, Esq.,

523 West Sixth Street,

Los Angeles, California.

United States of America, ss.

To Arizona Wax Paper Company and State Produce Exchange, and their attorney, Benjamin W. Shipman Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 12 day of November, A. D. 1936, pursuant to an order allowing an appeal filed on October 14, 1936 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled "In the matter of Joseph H. Grande, Bankrupt, In Bankruptcy No. 24154-J" wherein Joseph H. Grande is appellant and you are appellees to show cause, if any there be, why the order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable William P. James United States District Judge for the Southern District of California, this 14 day of October, A. D. 1936, and of the Independence of the United States, the one hundred and sixty-first.

Wm. P. James
U. S. District Judge for the Southern District of California.

Received copy of Citation, Appeal, Order for Appeal, Assignment of Errors and Order allowing Appeal.

Benj. W. Shipman
Attorney for Appellees.

Dated October 15, 1936

[Endorsed]: Filed R S Zimmerman, Clerk at 3 min. past 3 o'clock Oct 16 1936 P. M. By R B Clifton Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

In the Matter of)
(In Bankruptcy No. 24154-J
JOSEPH H. GRANDE,) FINDINGS AND ORDER.
(
Bankrupt.)

The trustee herein having filed his original petition for a turn over order as against Hazel D. Grande, the daughter of the bankrupt, Joseph H. Grande, the bankrupt, Daisy Grande, the wife of the Bankrupt, and James Donovan, their attorney, and Grande California, Inc., a California corporation, and the said respondents, and each of them, appearing the day set for the hearing, to-wit, January 31, 1935, and making objection that no evidence should be introduced for the reason that said petition was made on information and belief and not upon the absolute allegation of fact, and said objections, and each of them, having been sustained, and the Court having allowed the trustee to file a new application, to-wit, a new trustee's petition under oath. The allegations of the new petition were verified absolutely and not on information and belief.

The respondents, and each of them, then waived an additional five (5) days notice of the hearing and in the interests of hearing the matter promptly, they being present with their witnesses, entered into the following stipulation in open court. That upon the trustee's new application and the Referee's order to show cause thereon, they waived the five (5) days notice or any additional service thereof other than as made on their counsel in the court; that they waived all notice of time of the hear-

ing and consented that the matter might be heard then and there forthwith. That the court accepted said stipulation and the parties proceeded to trial.

Evidence, oral and documentary, was introduced on behalf of the parties and it was stipulated that the respective answers of Daisy Grande, Joseph H. Grande, Hazel D. Grande and James Donovan theretofore filed as answers to the original trustee's application might stand as the answers to the amended application.

The Court now makes the following

FINDINGS:

William I. Heffron is the duly elected, qualified and acting trustee of the estate of the bankrupt, Joseph H. Grande.

That prior to the formation of the corporation, Grande California, Inc., Joseph H. Grande did business under the name of Grande California. That on or about March 2, 1934, the bankrupt had many and extensive debts, upon which some of his creditors were pressing him for collection by the filing of suits in various counties of California, and one or more creditors had obtained a judgment against him for substantial sums.

That thereupon the bankrupt, Joseph H. Grande, for the purpose of preventing his creditors then existing, from collecting their accounts against him, and also for the purpose of hindering, delaying and defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to a corporation he then caused to be incorporated, to-wit, the corporation known as Grande California, Inc. That the said corporation was then caused to come into

being and to exist for the sole purpose of permitting the said Joseph H. Grande to do business without being hindered by his creditors, and for the purpose of permitting him to retain possession of his property under the name and in the corporate form afforded by the incorporation of Grande California, Inc. James Donovan was personally not a party to any fraud.

The Court finds that no person invested any money, either as a contribution to capital assets, or otherwise, to Grande California, Inc., either at the time it was incorporated, or at any time since, and that Joseph H. Grande is the owner in fact of said corporation, its corporate stock, and all of its assets.

The Court finds that James Donovan, the attorney for Joseph H. Grande was the attorney employed by Joseph H. Grande to draw the articles of incorporation and the by-laws, and for the purpose of convenience only, two of the shares of stock of Grande California, Inc. were to be issued in the name of James Donovan. The Court finds that it is admitted by James Donovan that he invested no money and contributed nothing to the capital assets of said corporation, *altho* it is claimed by James Donovan that he charged One Hundred ($100.00) Dollars attorney's fees for creation of the corporation, for which he took said two (2) shares of the capital stock. This Court finds that James Donovan is mistaken in the assertion of such claim, and of the fact which he alleges with respect thereto, and finds that James Donovan was paid his attorney's fee in the form of a check which bore the inscription on the voucher portion thereof at the time it was delivered to James Donovan, and at the time that James Donovan endorsed his said check for payment, and

at the time said check was paid to James Donovan, to-wit, the endorsement and notation on the face of said check, "Incorporating Grande California". The Court finds that this check was made payable to James Donovan and was endorsed and cashed by him, and that he received the sum of money shown in said check in payment of his services and not otherwise.

Hazel D. Grande, the daughter of the bankrupt, and Gladys Fritz, have at no time contributed any money to the capital assets of said corporation, nor any money in payment of the stock, and the holding of stock in the names of Hazel D. Grande and James Donovan and/or Gladys Fritz, was for the purpose of the convenience of Joseph H. Grande only and for no other purpose.

The Court finds that the assets of Grande California, Inc., have not been turned over to the trustee and he has not come into the possession thereof at this time. That there are insufficient assets now held by the trustee to pay the debts of the bankrupt.

And from the foregoing facts and the evidence in the case, the Court makes its

CONCLUSIONS.

That the corporation, Grande California, Inc., is the alter ego of Joseph H. Grande, the bankrupt. That the bankrupt, Joseph H. Grande, is the sole owner of all of the capital stock of said corporation, and all of its assets, including its trucks, cash, merchandise, leases and contracts, and personal property of every kind and description, including its book accounts, and that the said property, and all thereof, should have been turned over to the trustee in bankruptcy by the bankrupt at the time that

he was heretofore adjudicated a bankrupt on his own voluntary petition.

THEREFORE, IT IS HEREBY ORDERED that William I. Heffron, trustee in bankruptcy, forthwith take immediate possession of all of the assets of the bankrupt, standing in the name of Grande California, Inc., whether the same exist at Salinas, California, or elsewhere, and use all necessary force so to do.

That Grande California, Inc., is in fact, Joseph H. Grande. That Joseph H. Grande has exercised absolute and complete control and dominion over the said corporation and its assets since the creation of said corporation, Grande California, Inc., on or about the 2nd or 3rd of March, 1934.

IT IS FURTHER ORDERED that said Grande California, Inc., its officers, agents, directors and counsel, including Joseph H. Grande, the bankrupt, Hazel D. Grande, the daughter of the bankrupt, Daisy Grande, the wife of the bankrupt, James Donovan, the attorney for the bankrupt, and Gladys Fritz, the secretary of Grande California, Inc., be and hereby are restrained and enjoined from interfering with the possession, use and occupation of the assets of Grande California, Inc. by the trustee in bankruptcy herein, other than reviewing the orders of this Referee in the manner provided by law, or taking such other legal proceedings herein as may be available to them under the procedure of the Bankruptcy Law.

Dated at Los Angeles, California, this 4th day of February, 1935.

Rupert B. Turnbull
Referee in Bankruptcy

CERTIFICATE OF TRUE COPY

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF CALIFORNIA } SS.
CENTRAL DIVISION

I, RUPERT B. TURNBULL, Referee in Bankruptcy in and for the County of Los Angeles, State of California, in and for the said district, do hereby certify that the foregoing is a true and correct copy of "FINDINGS AND ORDER" in the above entitled matter as the same appears of record in the proceedings in said matter now on file in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 6th day of February, 1935.

Rupert B Turnbull
Referee in Bankruptcy

[Endorsed]: Filed 10 A. M. Feb. 25, 1935 R. S. Zimmerman, Clerk. By Murray E. Wire Deputy Clerk.

[Title of Court and Cause.]

MOTION AND ORDER TO SHOW CAUSE

Comes now your petitioner, Joseph H. Grande, by his attorney, James Donovan, and prays for an order to Show Cause why the Referee, Rupert B. Turnbull, should not certify to this Court a transcript of his proceedings in support of the Findings made in said cause and the grounds of appeal therefrom to this Court, as hereinafter set forth in this petition.

That the Findings and Order made by said referee, Rupert H. Turnbull, and certified to on the 4th of February, 1935, were served upon James Donovan, attorney for Joseph H. Grande, bankrupt, either on the afternoon of the 4th of February, or the early morning of February 5th.

That an order to Show Cause on Trustee's Petition for Summary Order was issued on the 25th of January, 1935, to be heard on the 31st day of January, 1935, at ten o'clock, A. M., based upon an affidavit of the sworn statement of the trustee, William I. Heffron, on information and belief.

That said Order to Show Cause was served upon the following named persons: Joseph H. Grande, bankrupt, Daisy Grande, his wife, Hazel Grande, his daughter, James Donovan, his attorney and Gladys Fritz, secretary of the Grande-California, Incorporated, all of whom filed answers to said Order to Show Cause and appeared on the 31st day of January in the Court of Rupert B. Turnbull. Prior to the day set for said hearing Joseph H. Grande, bankrupt, his wife and his daughter, were interrogated concerning his personal property and assets they had

accumulated and transferred during the thirty-six years of their married life, all of which was objected to by your petitioner upon the grounds that the same was not material, irrelevant, and would not in anywise disclose any assets or liabilities covering the period during which the creditors' claims existed; and upon the hearing on said 31st day of January, 1935, all of the testimony heretofore taken was offered in evidence in bulk by Counsel for the trustee, all of which was objected to by the attorney for the bankrupt, then withdrawn by the attorney for the trustee and only one or two excerpts of said testimony was offered; thereupon these offers of excerpts were again withdrawn by counsel for the trustee; then, a renewed *effort* was made of all the testimony that had been taken at the prior hearings, which was again objected to. All of the persons who were served with the Order to Show Cause for a Summary Order in behalf of the Trustee, were called and testified, except the Secretary of Grande-California, Incorporated. Thereupon, the Referee announced that James Donovan, representing the bankrupt, should file a brief by Monday afternoon, February 4th.

That James Donovan, attorney for your petitioner, spent the 1st, 2nd and 3rd of February preparing a brief and delivered to the Clerk of said Court, Monday noon, a brief and mailed a copy of the same, Sunday evening, to Mr. Shipman, attorney for the trustee.

That upon delivering the brief to the Clerk of the Referee, he confirmed what the Court had stated on the Friday before, that no further hearing in this matter would be heard before the 15th of March, for the reason that the Court was making a trip to the Hawaii Islands.

Counsel for the trustee announced that he desired to make further examination of Daisy Grande and that the matter of the hearing was not opposed.

That since James Donovan, attorney for the bankrupt, received the Findings or Order of the Referee, not having the rules of procedure in bankruptcy matters in his office, only having the United States Compiled Statutes, Annotated, he sent a young law student from his office to the Law Library to find out how much time he had in which to except to and appeal from the Findings and Order of the Referee. He brought back the information that under the rule, attorney for the bankrupt was entitled to twenty days, which would give him until the 24th or 25th of February in which to prepare his exceptions to the ruling of the Referee and have him certify same to the Judge of the District Court.

On the 19th of February, 1935, your petitioner received a letter from Mr. Shipman, attorney for the trustee, in which he wrote me, as follows: "The Order of the Court having become final, all of the assets and property in the corporation should be turned over to the trustee." James Donovan, attorney for your petitioner, immediately began investigation of the time in which he should have presented his application under general order XXVIII, but he found nowhere in the text the time limit in which to take an appeal on further order. He discovered in the local Court rule 84, that he should have filed with the Referee a petition for a review of the Order made by the Referee, within ten days from the service of the Findings upon him. He has examined a few decisions under this rule and finds that this being a rule established by the Court, its construction of the rule gives it the full force and effect of a statutory enactment; however, believing

that it is within the judicial discretion of the Court making the rules to relieve one of an error of this character, he should be relieved from this default and be granted an opportunity to have a review of the Findings and Order of the Referee, and the time be extended in which to prepare his exceptions to Findings of the Referee, on the following grounds:

I. That the Referee who heard the case is the only person who can certify the same to the Court.

II. That the Referee left his office on or about the 5th or 6th of February, 1935, and if attorney for your petitioner had prepared his application within the ten days, he would not be here to certify it to this Court as he would not return until about the 15th of March, 1935.

III. That the attorney for the trustee announced that there would be a further hearing of the evidence of Mrs. Daisy Grande upon the return of the Referee.

IV. That no hardship, or inconvenience will inmure or interfere with the rights of the trustee by the delay until the Referee returns, at which time he can certify the record to this Court.

V. There is a direct charge of fraud against the bankrupt, Joseph H. Grande, and an implication of a participation and direction of the acts of the bankrupt by James Donovan, his counsel, in the incorporating of Grande-California, Incorporated.

VI. That while the rules made by the United States District Court, governing bankruptcy procedure, have the

same dignity and force as though they were statutory enactments, yet the rules, so made by the court, can be changed, or modified, or the Court can exercise its judicial discretion to relieve either an attorney or a litigant from an embarrassment such as is indicated in this petition, when it can work no hardship to the adverse party.

Upon the foregoing grounds your petitioner respectfully prays that an Order to Show Cause issue why the petitioner should not be granted extension of time in which to present to the Referee his petition for a review of the ruling of the Referee.

Respectfully submitted by Joseph H. Grande, by his attorney, James Donovan.

James Donovan

Upon the 21st day of February, 1935 the petition of Joseph H. Grande, bankrupt, to Show Cause why he should not be granted the time in which to file a petition before the Referee in the above entitled matter, to have the same reviewed by this Court, it is therefore, ordered that Notice be given to the trustee, or his attorney of record, to appear on Monday, the 25th day of February, before this Court, to show cause, if any he has, why this petition should not be granted.

Wm. P. James

Judge.

February 21, 1935.

Upon application of James Donovan, attorney for the above named bankrupt, to shorten time in which to serve copy of the petition and order to show cause upon the counsel for the trustee, it is hereby ordered that instead of serving the same upon counsel for the trustee five days before the date of said hearing that the time be shortened in which to serve said order to show cause and petition to four days, so that the same may be heard on the 25th day of February, 1935, at 10 o'clock, a. m. before this Court.

Wm. P. James

Judge

February 21, 1935.

[Endorsed]: Received copy of within Motion and Order to Show Cause this 21st day of Feb. 1935 Benjamin W. Shipman, Atty for Trustee. Filed R. S. Zimmerman Clerk at 53 min. past 10 o'clock Feb. 23, 1935 A. M. By F. Betz, Deputy Clerk.

[Title of Court and Cause.]

OPINION AND ORDER ON PETITION OF BANKRUPT FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW OF REFEREE'S ORDER

It appears that the referee in bankruptcy, after due hearing on order to show cause, entered his decision on February 4, 1935, directing the bankrupt to turn over to the trustee all property held by Grande California, Inc., as being property of the bankrupt's estate. Notice of this decision was given to counsel for the bankrupt and no proceedings were taken by the latter for ten days thereafter, at the expiration of which time, under the provisions of Rule 84 of this court no review proceeding could be instituted to bring the matter to the District Court. The rule referred to provides that petition for review of any order made by the referee shall be filed with the referee within ten days after the date of notice of the order. The rule further provides "for good cause showing, the referee may at any time within said period of ten days, extend the time an additional thirty days within which a petition for review may be filed." Counsel for the bankrupt did not discover this provision limiting the period to file his petition for review until after the ten days had expired. He has now presented a motion asking to be relieved of the default and be permitted to have the order reviewed. The counter showing made by the trustee quite clearly shows that the hearing was duly had as to the matter determined and that due notice of the decision was given to counsel for the bankrupt. Counsel for the bankrupt admits that the rules of court have the effect

of statutes, and this is clearly held by the decisions. The Supreme Court of the United States has said that the Federal courts have inherent power to make rules governing the practice so long as they are not in conflict with express statutes. "The general rule undoubtedly is that courts of justice possess the inherent power to make and frame reasonable rules not conflicting with express statute." In re Hien, 166 U. S. 432. A court rule limiting the time within which to file a petition for review is binding. In re David, 33 Fed. (2d) 740; Patents Process, Inc. v. Durst, 69 Fed. (2d) 283. It is nevertheless held that it is "in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it." U. S. v. Gottlieb Breitling, 61 U. S. 252. It is generally held that ignorance of counsel of the provisions of a rule of court is not sufficient to authorize vacation of judgments or orders. This because counsel is presumed to be acquainted with such rules. California Juris., (See Vol. 14, Sec. 99).

Considering the merits of the case, it is not made to appear that injustice will result to the bankrupt by the enforcement of the order. There seemed to have been no conflict as to the fact that the Grande California, Inc. was a mere vehicle used by the bankrupt for the conducting of business. Where such is the case, and as is apparent here, bankrupt was the mere alter ego of the corporate organization. He owned all of the stock, except perhaps some qualifying shares, and was, in fact, necessarily the owner in turn of all of the corporate property. While the particular matter was not made the subject of contest, in Patents Process, Inc. v. Durst, (supra), the opinion opens with the expression that "Patents Process,

Inc., a corporation, is the alter ego of Frank D. Williams. Bankruptcy proceedings were filed against both and the proceedings were consolidated."

Counsel for the bankrupt, who is a reputable practitioner at this bar, seems to be of the opinion that there is some reflection cast upon him by reason of the terms of the order of the referee, because that counsel was employed to organize the corporation in question. I am not of the view that counsel should make any such assumption because of his having performed the duties of an attorney in organizing the corporation a considerable time before the bankrupt filed his voluntary petition. So far as this court is concerned, counsel need have no apprehension that any view will be taken which will cast discredit upon his professional integrity.

I am of the view: (1) That the showing as to the mistake of counsel is not sufficient to justify the making of the order here sought; (2d) Assuming that the omission to act was excusable, the facts as presented touching the propriety of the order made by the referee are insufficient to support a substantial claim for error.

For the reasons stated, the petition of the bankrupt will be denied, and it is so ordered. An exception is noted.

Dated February 27, 1935.

Wm. P. James
U. S. District Judge.

[Endorsed]: Filed R. S. Zimmerman Clerk at 54 min. past 2 o'clock Feb. 27, 1935 P. M. By Murray E. Wire, Deputy Clerk.

[Title of Court and Cause.]

REFEREE'S CERTIFICATE OF COMPLIANCE

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

I, RUPERT B. TURNBULL, Referee in Bankruptcy, to whom the above entitled proceeding has been referred, do hereby certify that the above named Bankrupt was on the 10th day of October, 1934, adjudged Bankrupt; that so far as appears from the records and files of my office and matters coming to my attention said Bankrupt has complied with all the orders of the Court and the requirements of the Bankruptcy Act and has committed none of the offenses and done none of the things prohibited by said act.

Dated: September 23, 1935

Rupert B Turnbull
Referee in Bankruptcy

[Endorsed]: Filed R. S. Zimmerman Clerk at 20 min. past 3 o'clock Sep. 26, 1935 P. M. By F. Betz, Deputy Clerk.

[Title of Court and Cause.]

BANKRUPT'S PETITION FOR DISCHARGE AND ORDER THEREON

To the Honorable Judge of the District Court of the United States, For the Southern District of California—Central Division

Joseph H. Grande (Name of Bankrupt) of Alhambra (City)

in the County of Los Angeles and State of California in said District, respectfully represents:

That on the 10th day of October last past, he was duly adjudged bankrupt under the Acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said Acts and of the orders of the Court touching said bankruptcy.

WHEREFORE he PRAYS that he may be decreed by the Court to have a full discharge from all debts provable against his estate under said Bankruptcy Act, except such debts as are excepted by law from such discharge.

Dated this 8th day of October A. D., 1935

Joseph H. Grande
Bankrupt.

ORDER OF NOTICE THEREON

United States of America,
Southern District of California ss.

On this 9th day of October A. D., 1935, on reading the foregoing petition, it is

ORDERED BY THE COURT, that a hearing be had upon the same on the 2nd day of December A. D., 1935 before said Court, IN THE FEDERAL BUILDING, at Los Angeles in said District at 10 o'clock in the forenoon; and that notice thereof be published in THE LOS

ANGELES DAILY JOURNAL, a newspaper printed in said District, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of said petitioner should not be granted.

AND IT IS FURTHER ORDERED BY THE COURT, that the Referee shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

WITNESS the Honorable Wm P James Judge of said Court and the seal thereof, at Los Angeles in said District, on the 9th day of October A. D., 1935

[Seal of the Court]

R. S. ZIMMERMAN, Clerk.
By L Wayne Thomas
L. Wayne Thomas
Deputy Clerk.

James Donovan Esq
Address 940 Subway Terminal Bldg.
Los Angeles, Calif
Attorney for Said Bankrupt.

Referee Turnbull
Number of copies of notice for Referee 70

NOTE

Any creditor objecting to the discharge of the above bankrupt must file specifications of the grounds of his objections in writing with the Clerk of the U. S. District Court at or before the time of hearing said matter as an extension of time may not be allowed for that purpose. U. S. Supreme Court form No. 58 has been prescribed for such specifications.

[Endorsed]: Filed R. S. Zimmerman Clerk at 53 Min past 2 o'clock Oct. 9, 1935 P. M. By L. Wayne Thomas, Deputy Clerk.

[Title of Court and Cause.]

AFFIDAVIT OF PUBLICATION.

In the matter of JOSEPH H. GRANDE, In Bankruptcy

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

G. Artz, of said County and State, being duly sworn, says:

That I am and at all times herein mentioned was a citizen of the United States, over eighteen years of age, and not a party nor interested in the above entitled matter; that I am the principal clerk of the printer, publisher and proprietor of the LOS ANGELES DAILY JOURNAL, a newspaper printed and published daily (Sundays excepted), in the said Los Angeles County; that the BANKRUPT'S PETITION FOR DISCHARGE AND ORDER THEREON, in the above entitled matter, of which the annexed is a printed copy, was published in said newspaper October 10th, 1935

G Artz

Subscribed and sworn to before me, this 10th day of October, 1935.

Wm W Roe
Notary Public in and for Los Angeles County,
State of California.

[Endorsed]: Filed R. S. Zimmerman Clerk at 55 min. past 1 o'clock Oct. 23, 1935 P. M By L. Wayne Thomas, Deputy Clerk.

[Title of Court and Cause.]

SPECIFICATIONS OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE

Arizona Wax Paper Co., a co-partnership, with its principal place of business at Salinas, California, a creditor of said Joseph H. Grande, a bankrupt, does hereby object to the granting to him of the discharge from his debts and, for the grounds of such opposition, does file the following specifications:

That, within eleven (11) months immediately preceding the filing of the petition herein by the said bankrupt, said bankrupt transferred and concealed his property, with the intent to hinder, delay and defraud his creditors. That such transfer and concealment was accomplished by the bankrupt by the transfer of his assets to a corporation under the name of Grande California, Inc., and was so transferred within said period for the purpose of defrauding his then existing creditors. That, at said time, this objecting creditor was a creditor of said Joseph H. Grande. That said Joseph H. Grande has turned over to said corporation more than one dollar ($1.00) in cash, and various other assets.

That, on or about the 4th day of February, 1935, a turn-over order was made by the Hon. Rupert B. Turnbull, Referee in Bankruptcy, a certified copy of which order is hereto attached, marked "Exhibit A", and, by reference, made a part hereof, and, in said proceeding, it was held and determined that said Joseph H. Grande, the bankrupt herein, for the purpose of preventing his then existing creditors from collecting their accounts against him and also for the purpose of hindering, delaying and

defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash, merchandise, leases and contracts to said corporation for the purpose as aforesaid. That said order and findings of the referee in bankruptcy have become final and have not been revised, modified or in any wise changed. That said bankrupt knowingly and fraudulently omitted the property turned over to the corporation, and in existence at the time of bankruptcy, from his schedule of assets herein, and failed to reveal to said trustee the existence of the same or the facts as to the title of said corporation to said property, and fraudulently and knowingly concealed the said facts from said trustee, and, on the contrary, maintained that he had but a small stock interest in said corporation, while, in truth and in fact, said corporation belonged wholly to said bankrupt, was controlled and dominated by him, and was his alter ego. That said corporation had no permit to issue stock at any time before October 10, 1934.

That, within four (4) months of the bankruptcy, said bankrupt transferred property and assets to his wife, consisting principally of moneys of the value of more than one dollar ($1.00) for the purpose of defrauding his then existing creditors. That the creditor appearing herein in opposition to the bankrupt's petition for discharge was a creditor at the time of such transfers and concealments.

Said bankrupt at a time subsequent to the first day of the four (4) months immediately preceding the filing of the bankruptcy petition herein, to-wit, during the month of September, 1934, and prior to the 10th day of October, 1934, with intent of delaying and defrauding his creditors, transferred, removed and concealed, and permitted to be removed and concealed, a portion of his property,

to-wit, cash in bank and on hand, and that he transferred the same to Daisy Grande, his wife, and concealed his title thereto in said Daisy Grande's name.

That, within said four (4) months, upon numerous occasions, said bankrupt caused to be made payments of amounts of more than one dollar ($1.00) each on account of purchases of automobiles, real and personal property in the name of Daisy Grande, his wife, for the purpose of concealing his title thereto in the name of said Daisy Grande.

That, within said four (4) months, upon numerous occasions, said bankrupt caused to be made payments of amounts of more than one dollar ($1.00) each on account of purchases of real property, in the name of Hazel D. Grande, his daughter, for the purpose of concealing his title thereto in the name of said Hazel D. Grande.

That the Arizona Wax Paper Co., a co-partnership, appearing herein, is a creditor of said Joseph H. Grande, and has filed a claim, as such creditor, in the instant bankruptcy proceeding.

WHEREFORE, said Arizona Wax Paper Co., a co-partnership, prays the Court to deny said bankrupt's petition for discharge.

ARIZONA WAX PAPER CO.

By T. G. Emmons

Objecting Creditor

Benj. W. Shipman

Attorney for said Objecting Creditor

STATE OF CALIFORNIA)
) ss.
County of Monterey)

On this 1st day of December in the year one thousand nine hundred and Thirty Five before me, F C Johansen a Notary Public in and for the County of Monterey, State of California, residing therein, duly commissioned and sworn, personally appeared T G Emmons Co-Partner of Arizona Wax Paper Co. known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Monterey the day and year in this certificate first above written

[Seal] F. C. Johansen

Notary Public in and for the County of Monterey, State of California

My commission expires Jany. 14, 1938

[For Exhibit "A" See Order of 2/4/35 Heretofore Printed.]

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF CALIFORNIA) ss
CENTRAL DIVISION)

BENJ. W. SHIPMAN, first by me being duly sworn, deposes and says: that he is attorney in the within matter for the objecting creditor, Arizona Wax Paper Co.; that he has prepared the specifications of grounds of opposition to the bankrupt's discharge; that the co-partners constituting the Arizona Wax Paper Co. are not within the County of Los Angeles and, for that reason, the affiant executes this verification; that the matters set forth therein appertaining to a turn-over order are true of affiant's own knowledge and, as to the other matters of opposition therein set forth, affiant believes them to be true.

Benj. W. Shipman

Subscribed and sworn to before me this 2nd day of December, 1935.

[Seal] Ione Virden

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires January 26, 1937

[Endorsed]: Filed 10 A. M. Dec. 2, 1935 R. S. Zimmerman Clerk By Murray E. Wire, Deputy Clerk.

[Title of Court and Cause.]

SPECIFICATIONS OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE.

Sun State Produce Exchange, a corporation, with its principal place of business in San Francisco, California, and doing business in the County of Imperial, State of California, a party interested in the Estate of Joseph H. Grande, a bankrupt, does hereby object to the granting to him of the discharge from his debts and, for the grounds of such opposition, does file the following specifications:

That, within eleven (11) months immediately preceding the filing of the petition herein by the said bankrupt, said bankrupt transferred and concealed his property, with the intent to hinder, delay and defraud his creditors. That such transfer and concealment was accomplished by the bankrupt by the transfer of his assets to a corporation under the name of Grande California, Inc., and was so transferred within said period for the purpose of defrauding his then existing creditors. That, at said time, this objecting creditor was a creditor of said Joseph H. Grande. That said Joseph H. Grande has turned over to said corporation more than one dollar ($1.00) in cash, and various other assets.

That, on or about the 4th day of February, 1935, a turn-over order was made by the Hon. Rupert B. Turnbull, Referee in Bankruptcy, a certified copy of which order is hereto attached, marked "Exhibit A" and, by reference, made a part hereof, and, in said proceeding, it was held and determined that said Joseph H. Grande, the bankrupt herein, for the purpose of preventing his then existing creditors from collecting their accounts

against him and also for the purpose of hindering, delaying and defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash, merchandise, leases and contracts to said corporation for the purpose as aforesaid. That said order and findings of the referee in bankruptcy have become final and have not been revised, modified or in any wise changed. That said bankrupt knowingly and fraudulently omitted the property turned over to the corporation, and in existence at the time of bankruptcy, from his schedule of assets herein, and failed to reveal to said trustee the existence of the same or the facts as to the title of said corporation to said property, and fraudulently and knowingly concealed the said facts from said trustee, and, on the contrary, maintained that he had but a small stock interest in said corporation, while, in truth and in fact, said corporation belonged wholly to said bankrupt, was controlled and dominated by him, and was his alter ego. That said corporation had no permit to issue stock at any time before October 10, 1934.

That, within four (4) months of the bankruptcy, said bankrupt transferred property and assets to his wife, consisting principally of moneys of the value of more than one dollar ($1.00) for the purpose of defrauding his then existing creditors. That the creditor appearing herein in opposition to the bankrupt's petition for discharge was a creditor at the time of such transfers and concealments.

Said bankrupt at a time subsequent to the first day of the four (4) months immediately preceding the filing of the bankruptcy petition herein, to-wit, during the month of September, 1934, and prior to the 10th day of October, 1934, with intent of delaying and defrauding his creditors, transferred, removed and concealed, and permitted to be

removed and concealed, a portion of his property, to-wit, cash in bank and on hand, and that he transferred the same to Daisy Grande, his wife, and concealed his title thereto in said Daisy Grande's name.

That, within said four (4) months, upon numerous occasions, said bankrupt caused to be made payments of amounts of more than one dollar ($1.00) each on account of purchases of automobiles, real and personal property in the name of Daisy Grande, his wife, for the purpose of concealing his title thereto in the name of said Daisy Grande.

That, within said four (4) months, upon numerous occasions, said bankrupt caused to be made payments of amounts of more than one dollar ($1.00) each on account of purchases of real property, in the name of Hazel D. Grande, his daughter, for the purpose of concealing his title thereto in the name of said Hazel D. Grande.

That the Sun State Produce Exchange, a corporation, appearing herein, is a creditor of said Joseph H. Grande, and has filed a claim, as such creditor, in the instant bankruptcy proceeding.

WHEREFORE, said Sun State Produce Exchange, a corporation, prays the Court to deny said bankrupt's petition for discharge.

SUN STATE PRODUCE EXCHANGE,
By J. W. Asher
Objecting creditor.

Benj. W. Shipman
Attorney for Objecting Creditor

[For Exhibit "A" Attached Hereto, See Order of Referee Dated Feb. 4, 1935, Heretofore Printed.]

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF CALIFORNIA) ss.
SOUTHERN DIVISION)

J. W. Asher being by me first duly sworn, deposes and says: that he is the managing agent of Sun State Produce Exchange, a corporation, in the above entitled action; that he has read the foregoing specifications of grounds of opposition to Bankrupt's Discharge, Joseph H. Grande, Bankruptcy and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true. That affiant makes this verification for the reason that the facts are within his knowledge and that no officer of the corporation is present within the jurisdiction of this court.

J. W. Asher

Subscribed and sworn to before me this 30th day of November, 1935.

[Seal] Russie W. Shaw
Notary Public in and for the County of Imperial, State of California.

[Endorsed]: Filed Dec 2 1935 R. S. Zimmerman, Clerk By Murray E. Wire, Deputy Clerk

ORDER REFERRING OBJECTIONS TO SPECIAL MASTER

At a stated term, to-wit: The September Term A. D. 1935 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court room thereof, in the City of Los Angeles on Monday the 2nd day of December in the year of our Lord one thousand nine hundred and thirty five: Present: The Honorable William P. James, District Judge

In the Matter of	)	
	)	
JOSEPH H. GRANDE	)	No. 24154-J Bkcy
	)	
Bankrupt.	)	

This matter coming before the Court for hearing on the Bankrupt's Petition for discharge; Benjamin W. Shipman, Esq. appearing for the Arizona Wax Paper Co., objecting Creditor, presents in writing appearance in opposition to discharge, and Specifications of objections to discharge, which are filed herein, and the Court orders the matter referred to the Referee herein as Special Master for hearing and report to the Court on said objections.

Later, at the hour of 4.30 o'clock p. m., appearance of the Sun State Produce Exchange, objecting Creditor, by his attorney, B. W. Shipman, and the Specifications of objections to discharge are presented for filing herein, the Court orders same filed and orders same referred to the Referee, as Special Master, for hearing and report to the Court on said objections.

[Title of Court and Cause.]

REPORT OF REFEREE AS SPECIAL MASTER ON CREDITORS' OBJECTIONS TO BANKRUPT'S PETITION FOR DISCHARGE

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

The Above entitled proceedings were referred to Hugh L. Dickson, Referee in Bankruptcy, as Special Master, by order of the United States District Court, dated December 2nd, 1935, to hear the issues raised by the bankrupt's petition for discharge, and the objections thereto filed by Sun State Produce Exchange, creditor of said bankrupt.

Thereupon the matter came up regularly for hearing before the Special Master, on the 5th day of March, 1936; was continued from time to time, which continuance was agreed to by counsel representing the objecting creditor and counsel representing the bankrupt, and was thereafter concluded on the 15th day of July, 1936; there appearing at said hearing, and in all matters appertaining thereto on behalf of said creditor, Benjamin W. Shipman, Esq., and there appearing on behalf of said bankrupt, James Donovan, Esq.

A trial was had of the issues raised by the bankrupt's petition for discharge and the objections thereto filed by the objecting creditor, the allegations contained in said specification of grounds of opposition to bankrupt's discharge being deemed denied;

Evidence, both oral and documentary, was presented and submitted to the Special Master; the evidence being closed, the cause was submitted to the Special Master for his report, findings and determination. The Referee, as such Special Master, reports as follows:

CHARACTER OF ISSUES

Upon the hearing, the objection urged to the discharge of the bankrupt, in accordance with his petition, was the objection based upon Sec. 14-b (4) of the Bankruptcy Act; namely, that the bankrupt had at any time subsequent to the first day of the twelfth month immediately preceding the filing of the petition, transferred, removed, destroyed or concealed or permitted to be transferred, removed, destroyed or concealed any of his property, with intent to hinder, delay or defraud his creditors.

The Special Master, upon the evidence adduced, finds as follows:

FINDINGS OF FACT

The objecting creditor is a creditor of the bankrupt, and, until 1933, existed as a California corporation, organized and existing under the laws of the State of California. In October of 1933, said corporation filed a Certificate of Dissolution in the office of the Secretary of State of the State of California. The indebtedness represented by the claim filed was incurred by the bankrupt before the dissolution of the corporate existence of the objecting creditor, and, prior to such dissolution, said objecting creditor secured a judgment against said bankrupt which has not been satisfied. Said objecting credi-

tor filed its claim, based upon said judgment, in the bankruptcy proceedings herein.

That, in the course of the bankruptcy proceedings herein, the Trustee in Bankruptcy did file a petition or application directed among others against the bankrupt herein for a turn-over order, claiming that a corporation known as Grande-California, Inc. was, in truth and in fact, the alter ego of the bankrupt; that the assets owned by said corporation were the assets of the bankrupt, transferred by said bankrupt to said corporation. That said bankrupt was present during all of the proceedings and hearings had upon the application for a turn-over order aforesaid; that such proceedings were had in connection with said application or petition that, on or about the 4th day of February, 1935, findings and order were made and entered, which findings and order have become final, and to which proceedings the bankrupt was a party, as aforesaid. It was found that, within eleven months prior to the filing of the voluntary petition in bankruptcy, the bankrupt herein transferred, assigned and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to said corporation, Grande-California, Inc. That, at said time, said bankrupt had many and extensive debts and at least one judgment against him. That said transfer by said Joseph H. Grande, the bankrupt, to said corporation of his assets was for the purpose of preventing his then existing creditors from collecting their accounts against him, and also for the purpose of hindering, delaying and defrauding his creditors.

It was further found in said proceedings, in which said findings and order have become final, that said corporation, to-wit: Grande California, Inc., was caused to come into being and to exist for the sole purpose of permitting

the said bankrupt to do business without being hindered by his creditors, and for the purpose of permitting him to retain possession of his property under the name and in the corporate form, and that no other person invested any money in said corporation, either as a contribution to capital assets, or otherwise, either at the time it was incorporated, or at any time prior to the 4th day of February, 1935, and that said Joseph H. Grande was, in fact, the owner of said corporation, its corporate stock and all of its assets.

It was further the conclusion of the court from the facts and the evidence that said Grande California, Inc., was the alter ego of Joseph H. Grande, the bankrupt, and that all of the property of said corporation should have been turned over to the Trustee in Bankruptcy by the bankrupt at the time of his adjudication. That the bankrupt did not turn over said assets at the time of the filing of the petition herein.

That the aforesaid findings and order were introduced in evidence, together with the file appertaining to the above entitled case. That the aforesaid findings and order, dated February 4th, 1935, are a part of the file and proceedings had in the above entitled bankruptcy proceedings. That said bankrupt was served with a copy of said findings and order, and thereupon made an application to be relieved of default arising upon the claim that a review of the findings and order of the Referee upon the turn-over proceedings could be filed within thirty days instead of ten days from the date of notice of such order.

That such application or petition to be so relieved was heard and considered by the Court and denied, and no appeal has been taken from this order, or any other proceeding herein had, and said findings and order of February 4th, 1935, have become and now are final.

That the bankrupt herein filed his petition in bankruptcy and was adjudged a bankrupt on the 10th day of October, 1934; that, on the 9th day of October, 1934, said bankrupt gave and transferred to his wife the sum of $1395.00, and, on the 10th day of October, 1934, the day upon which his petition was filed, and he was adjudicated a bankrupt, he gave to his wife the sum of $750.00. That said bankrupt, when questioned regarding these transfers to his wife, upon the dates aforesaid, gave no explanation of his act or acts and claimed that he did not remember the occurrence. (Tr. January 25th, 1935, p 2-3-4) That within eleven months prior to the filing of the petition in bankruptcy aforesaid, said bankrupt transferred to said Grande California, Inc a corporation, wholly owned by said bankrupt, assets consisting of interest in contracts and trucks, also transferred supplies and merchandise to said corporation, and that such transfers were made to a corporation wholly owned by him, a corporation adjudicated by said order of February 4th, 1935, to be the alter ego of said bankrupt. That, at the time of such transfer, he had creditors, had many and extensive debts; that many of his creditors were pressing him for collection thereof, and that the assets transfered by said bankrupt to said corporation, Grande-California,

Inc., were necessary for the payment of his debts, and such transfers were made to hinder his creditors.

The testimony of the bankrupt throughout the proceedings showed an entire lack of good faith and desire on the part of the bankrupt to tell the truth about his financial affairs. For exam*pe*, on page 90 of the transcript, when asked:

"Q. What was your income in 1931?

A. I don't know."

and on page 110 of said transcript, at line 22:

"Q. How much did you make in 1931?

A. Well, I could not exactly say.

Q. Well, approximately.

A. I must have made fifteen or twenty thousand dollars.

Q. In 1931?

A. I think so."

And the record is replete with instances of similar kind.

CONCLUSIONS OF LAW

From the foregoing statement of facts and testimony adduced at the trial, the Special Master finds that said Sun State Produce Exchange is a dissolved California corporation; that the debt, however, owing by the bankrupt to said corporation is a judgment secured by said corporation prior to its dissolution, and prior to the filing of the petition by said bankrupt herein. That, according to the provisions of Sec. 399 of the Civil Code of the State of California, a dissolved corporation can

proceed in the corporate name for the purpose of collecting all debts and obligations due it, and that, by the express provisions of said section, the corporation continues to exist for the purpose of winding up its affairs, prosecuting actions by or against it, enabling it to collect and discharge obligations, dispose of and convey its property, collect and divide its assets and for the purpose of continuing business as far as necessary for winding up thereof. That said objecting creditor is a creditor of said bankrupt, was a creditor at the time of the filing of said petition, and can maintain and present the objections in the instant proceeding to the bankrupt's discharge.

The Special Master further finds that the Order of February 4th, 1935, is a final order; that, by said order, it has been found and adjudged and decreed that said Joseph H. Grande, the bankrupt herein, for the purpose of preventing his creditors then existing from collecting their accounts against him, and also for the purpose of hindering and delaying and defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash and merchandise, leases and contracts to a corporation known as Grande California, Inc. That such acts took place within the period specified by Paragraph 14-b (4) of the bankruptcy Act. That the bankrupt, within a time the first day of which was subsequent to the first day of twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed and concealed his property with the intent to hinder, delay and defraud his creditors.

FURTHER, as to the objections to the discharge of the bankrupt herein, filed by Arizona Wax Paper Co., a co-partnership, the Special Master reports as follows:

CHARACTER OF ISSUES

Upon the hearing, the objection urged to the discharge of the bankrupt, in accordance with his petition, was the objection based upon Sec. 14-b (4) of the Bankruptcy Act; namely, that the bankrupt had at any time subsequent to the first day of the twelfth month immediately preceding the filing of the petition, transferred, removed, destroyed or concealed or permitted to be transferred, removed, destroyed or concealed any of his property, with intent to hinder, delay or defraud his creditors.

The Special Master, upon the evidence adduced, finds as follows:

FINDINGS OF FACT

At the time of the trial of the objections presented by said objecting creditor, Arizona Wax Paper Company, the bankrupt denied that said objecting creditor was a creditor of the bankrupt, claiming that said Arizona Wax Paper Company, a co-partnership, was a creditor of persons other than the bankrupt. The Special Master finds, however, that the testimony by the bankrupt is untrue; that the bankrupt, prior to bankruptcy, evidenced the debt by a promissory note, and also acknowledged the indebtedness in writing, declaring it to be his debt in a letter written to one of the members of said co-partnership. That, at the time the cause first came to hearing, there was claimed by the bankrupt that T. G. Emmons and Chas.

E. Goetz, doing business as Arizona Wax Paper Company, had at no time filed a Certificate of Doing Business as co-partners under a fictitious firm name, but the Court finds that the certificate was filed in the County of Imperial, State of California, and that publication thereof was made in accordance with the laws of the State of California, all prior to the filing of the petition in bankruptcy herein.

That, in the course of the bankruptcy proceedings herein, the Trustee in Bankruptcy did file a petition or application directed among others against the bankrupt herein for a turn-over order, claiming that a corporation known as Grande-California, Inc., was, in truth and in fact, the alter ego of the bankrupt; that the assets owned by said corporation were the assets of the bankrupt, transferred by said bankrupt to said corporation. That said bankrupt was present during all of the proceedings and hearings had upon the application for a turn-over order aforesaid; that such proceedings were had in connection with said application or petition that, on or about the 4th day of February, 1935, findings and order were made and entered, which findings and order have become final, and to which proceedings the bankrupt was a party, as aforesaid. It was found that, within eleven months prior to the filing of the voluntary petition in bankruptcy, the bankrupt herein transferred, assigned and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to said corporation, Grande California, Inc. That, at said time, said bankrupt had many and extensive debts and at least one judgment against him. That said transfer by said Joseph H. Grande, the bankrupt, to said corporation of his assets was for the

purpose of preventing his then existing creditors from collecting their accounts against him, and also for the purpose of hindering, delaying and defrauding his creditors.

It was further found in said proceedings, in which said findings and order have become final, that said corporation, to-wit: Grande California, Inc., was caused to come into being and to exist for the sole purpose of permitting the said bankrupt to do business without being hindered by his creditors, and for the purpose of permitting him to retain possession of his property under the name and in the corporate form, and that no other person invested any money in said corporation, either as a contribution to capital assets, or otherwise, either at the time it was incorporated, or at any time prior to the 4th day of February, 1935, and that said Joseph H. Grande was, in fact, the owner of said corporation, its corporate stock and all of its assets.

It was further the conclusion of the court from the facts and the evidence that said Grande California, Inc. was the alter ego of Joseph H Grande, the bankrupt, and that all of the property of said corporation should have been turned over to the Trustee in Bankruptcy by the bankrupt at the time of his adjudication. That the bankrupt did not turn over said assets at the time of the filing of the petition herein.

That the aforesaid findings and order were introduced in evidence, together with the file appertaining to the

above entitled case. That the aforesaid findings and order, dated February 4th, 1935, are a part of the file and proceedings had in the above entitled bankruptcy proceedings. That said bankrupt was served with a copy of said findings and order, and thereupon made an application to be relieved of default arising upon the claim that a review of the findings and order of the Referee upon the turn over proceedings could be filed within thirty days instead of ten days from the date of notice of such order. That such application or petition to be so relieved was heard and considered by this court and denied, and no appeal has been taken from this order, or any other proceeding herein had, and said findings and order of February 4th, 1935, have become and now are final.

That the bankrupt herein filed his petition in bankruptcy and was adjudged a bankrupt on the 10th day of October, 1934; that, on the 9th day of October, 1934, said bankrupt gave and transferred to his wife the sum of $1395.00, and, on the 10th day of October, 1934, the day upon which his petition was filed, and he was adjudicated a bankrupt, he gave to his wife the sum of $750.00. That said bankrupt, when questioned regarding these transfers to his wife, upon the dates aforesaid, gave no explanation of his act or acts and claimed that he did not remember the occurrence. That, within eleven months prior to the filing of the petition in bankruptcy aforesaid, said bankrupt transferred to said Grande California, Inc., a corporation wholly owned by said bankrupt, assets consisting of interest in contracts and trucks, also trans-

ferred supplies and merchandise to said corporation, and that such transfers were made to a corporation wholly owned by him, a corporation adjudicated by said order of February 4, 1935, to be the alter ego of said bankrupt. That, at the time of such transfer, he had creditors, had many and extensive debts; that many of his creditors were pressing him for collection thereof, and that the assets transferred by said bankrupt to said corporation, Grande California, Inc., were necessary for the payment of his debts, and such transfers were made to hinder his creditors.

CONCLUSIONS OF LAW

From the foregoing statement of facts and testimony adduced at the trial, the Special Master finds that Arizona Wax Paper Company is a co-partnership, consisting of T. G. Emmons and Chas. E. Goetz; that said Arizona Wax Paper Company is a creditor of said bankrupt, was a creditor of said bankrupt at the time of the filing of said petition by said bankrupt in voluntary bankruptcy, and can maintain the objections offered herein to the bankrupt's discharge.

The Special Master further finds that the order of February 4th, 1935, is a final order; that, by said order, it has been found and adjudged and decreed that said Joseph H. Grande, the bankrupt herein, for the purpose of preventing his creditors then existing from collecting their accounts against him, and also for the purpose of hindering and delaying and defrauding his creditors, as-

signed, transferred and set over, without consideration, automobiles, cash and merchandise, leases and contracts to a corporation known as Grande California, Inc. That such acts took place within the period specified by Paragraph 14-b (4) of the Bankruptcy Act. That the bankrupt, within a time the first day of which was subsequent to the first day of twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed and concealed his property with the intent to hinder, delay and defraud his creditors.

RECOMMENDATION

For the foregoing reasons, your Special Master recommends that the discharge of the bankrupt be denied. No charge is made by your Special Master for his services in connection with this hearing or the making of this report.

All papers are returned herewith as shown on the record of proceedings which accompanies, this report, together with the reporter's transcript(four volumes).

DATED at Los Angeles, California, this 6th day of August, 1936.

Hugh L Dickson

Special Master

[Endorsed]: Filed R. S. Zimmerman Clerk at 52 min. past 4 o'clock Aug. 6, 1936 P. M. By R. B. Clifton Deputy Clerk.

[Title of Court and Cause.]

NOTICE OF FILING SPECIAL MASTER'S REPORT.

TO BENJAMIN W. SHIPMAN, 511 Pacific Mutual Bldg. Los Angeles.

JAMES DONOVAN, 947 Subway Terminal Bldg., Los Angeles.

Attorneys:

NOTICE is hereby given that the report of HUGH L DICKSON, Special Master, was filed in the office of the Clerk of the above entitled court on the 6th day of August, 1936.

Dated, August 6th 1936.

Hugh L Dickson
Special Master.

[Endorsed]: Filed R. S. Zimmerman Clerk at 43 min. past 10 o'clock Aug. 8, 1936 A. M. By F. Betz, Deputy Clerk.

[Title of Court and Cause.]

APPEAL OF BANKRUPT

EXCEPTIONS TO REPORT OF SPECIAL MASTER

TO: the Honorable William P. James, Judge of the United States District Court, in and for the Southern District of California.

Comes now, Joseph H. Grande, Bankrupt, and appeals from the report of the referee as Special Master in the above bankruptcy proceeding and assigns errors of the Special Master in his report to the Judges of said District Court:

1. On the last day in which a protest could be filed against the discharge of the bankrupt, Joseph H. Grande, Benjamin W. Shipman appeared in the District Court in the above cause and filed objections on behalf of the Sun Produce Exchange, alleged creditor of the bankrupt, also a protest against the discharge of the bankrupt by the Arizona Wax Paper Company, a co-partnership.

Benjamin W. Shipman who filed these protests was the duly and regularly appointed attorney for the Trustee in this bankruptcy proceeding and appeared throughout the proceeding as attorney for the trustee, and instituted a suit on behalf of the trustee covering certain property claimed in Selinas County, California, to be the property of the bankrupt.

The appellant objected at the hearing before the Master to whom these protests were referred, and called the Master's attention to the fact that the attorney for the trustee could not appear as special counsel for a creditor

as a protestant to the discharge of the bankrupt while he was acting as attorney for the trustee. This point will be later given attention.

2. Two general objections to the discharge of the bankrupt were filed; one made by the Sun State Produce Exchange and the other by the Arizona Wax Paper Company. The grounds of objections were the same; there were no specific charges or grounds upon which the Master would be authorized under the law, Sec. 14-b (4) of the *Bankrupt* Act, to act, as we will call the attention of the court to later.

The rule as the appellant understands it, is that an objection to discharge of a bankrupt must be specifically alleged; the grounds of objections must be as clear and specific as are the charges in an indictment, and only can the Master, to whom the matter is referred, consider anything other than what is specifically charged in the objections.

On the report of the referee as Special Master, a trial was had of the issues raised by the bankrupt petition of discharge and objections thereto filed by the objecting creditor etc. Evidence both oral and documentary was presented and submitted to the Special Master; the evidence being closed the cause was submitted to the Special Master for his report, findings and determination. The referee, as Special Master, reports as follows:

The record in this case before the Master will show:

1. That there was, and is, no specific charge against the bankrupt sufficient under the law to deny the bankrupt his discharge. At the outset we call the attention of the court to the fact that the Master in this case misconceived and misconstrued the law applicable to pro-

ceedings in objections to the discharge of a bankrupt. Neither under the original *Bankrupt* Act, the amendment of 1903 or the amendment of 1910, does a proper construction of the law justify any such procedure as was taken under the order under which the Master acted in this particular case. When the matter was called for hearing the attorney Shipman offered in evidence the transcript of the testimony taken at the former hearing by the Referee in Bankruptcy, Turnbull, and also offered in evidence the decree of findings of Referee Turnbull, all of which were objected to by the attorney for the bankrupt, Grande, and which, as we allege and assign as error, was wholly inadmissible for any purpose in the proceedings ordered before the present Master.

3. On page 2, beginning at line 3, the report of the Master designates the character of issues, and under this head we find fault, after reciting the fact that this procedure is under Section 14-b (4), as follows:

"That the bankrupt had at any time subsequent to the first day of the twelfth month immediately preceding the filing of the petition, transferred, removed, destroyed or concealed or permitted to be transferred, removed, destroyed or concealed any of his property, with intent to hinder, delay or defraud his creditors."

This is the basis upon which the Special Master sought to permit evidence to be offered in support of the allegations contained in the protest of the creditors opposing the discharge of the bankrupt, upon which no evidence of any kind or character was offered within the rule of construction or the rule of requirement under Section 14-b (4).

Under the head of Findings of Fact in the Master's report we find the following: "The objecting creditor is a creditor of the bankrupt". Then it recites that up to October 1933, the Sun State Produce Exchange was a corporation, and in October of 1933 it dissolved its corporation as stated in the findings. The referee then goes on and makes a finding that the indebtedness claimed by the objecting creditor was incurred by the bankrupt before the dissolution of the corporation, and that a judgment was rendered or secured by the objecting creditor against the bankrupt, and that judgment has not been satisfied, and that the objecting creditor filed a claim based upon that judgment. Then it recites the fact that the Trustee in Bankruptcy in this particular case filed a petition or application through his attorney, Benjamin W. Shipman against the bankrupt for a turn-over order, which turn-over order the referee, Turnbull, denied. The Referee, Turnbull, then made certain findings as to the Grande-California, Inc. and the Special Master in this case proceeds to recite what his predecessor, as referee, found in the case as it was heard before the Referee Turnbull; and on page 3 of this report it reads: "That such proceedings were had in connection with said application or petition that, on or about the 4th day of February, 1935, findings and orders were made and entered, which findings and order have become final, and to which proceedings the bankrupt was a party, as aforesaid."

Then this Master further finds: "It was found that, within eleven months prior to the filing of the voluntary petition in bankruptcy, the bankrupt herein transferred, assigned and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to said corpora-

tion, Grande-California, Inc. That, at said time, said bankrupt had many and extensive debts and at least one judgment against him."

This finding is not sustained or based upon anything that was offered in evidence properly before the Master to whom this hearing was had. He simply goes on and recites what was found by the former referee in bankruptcy, but which matter was not within the jurisdiction of the present master to review. The record will show that when the hearing opened, Attorney Shipman looked to the bankrupt and to his attorney, James Donovan, as much as to indicate that it was their move. After some delay, as the record will disclose, Shipman rose and offered in evidence the testimony taken before the Referee Turnbull—offered it in bulk, and there was no evidence offered or any witnesses called on behalf of the protestants, either the Sun State Produce Exchange or the Arizona Wax Paper Company. The only person present representing at any of the hearings was the attorney Shipman, who was the attorney for the Trustee, Attorney for the protestants and who at no time offered any specific evidence than to tender the bulky record and the report of the referee, Turnbull, upon which to base his objections to the discharge of the bankrupt. There was no specific evidence of any kind or character offered to sustain this finding, "the bankrupt herein transferred, assigned and set over, without consideration, automobiles, cash, merchandise, leases and contracts to said corporation, Grande-California, Inc." There is no specific statement anywhere in the evidence shwoing that any property transferred or assigned to the Grande-California, Inc., was transferred to said corporation without a valid consideration.

The findings further proceed as follows:

Reviewing the former findings of Referee Turnbull—

"It was further found in said proceedings, (referring to the proceedings in bankruptcy), in which said findings and order have become final, that said corporation, to-wit: Grande-California, Inc., was caused to come into being and to exist for the sole purpose of permitting the said bankrupt to do business without being hindered by his creditors."

Then:

"It was further the conclusion of the court from the facts and the evidence that said Grande-California, Inc., was the alter ego of Joseph H. Grande."

Then it says:

"The aforesaid findings and order were introduced in evidence, together with the file appertaining to the above entitled case."

Then it simply goes on and relates that later the report made by the former referee in bankruptcy was a final order because an appeal had not been taken within a period of ten days. And on page 4, we find the following:

"That said bankrupt was served with a copy of said findings and order, and thereupon made an application to be relieved of default arising upon the claim that a review of the findings and order of the Referee upon the turn-over proceedings could be filed within thirty days instead of ten days * * *".

It would seem from the language here used that the Master is laboring under the misapprehension that Referee, Turnbull, made a turn-over order, but such is not the

case. The record clearly shows that during the proceedings at this hearing, Attorney Shipman petitioned and sought a turn-over order against Joseph H. Grande, Bankrupt, also attempted to obtain a turn-over order against Mrs. J. H. Grande, and which the Referee Turnbull denied.

Then it was further found on page 4 as follows: (which is a part of the original finding of the predecessor Referee Turnbull)

"That, on the 9th day of October, 1934, that said bankrupt gave and transferred to his wife the sum of $1395.00, and, on the 10th day of October, 1934, the day upon which his petition was filed, * * * he gave to his wife the sum of $750.00."

Now, if this Referee, or Master had read the record he would not have reached this conclusion, for the record clearly shows that the Grande-California, Inc., was doing business at the Selinas National Bank at Selinas, California, and upon an attachment being filed or run against certain property, and the account being carried in the bank in the name of the Grande-California, Inc., at the suggestion of the bank, to avoid annoyance both to the bank and to the Grande-California, Inc., the manager of the bank suggested that the account be transferred to the name of Mrs. Joseph H. Grinde, all of which was clearly and explicitly explained by Mrs. Grande, when she was several times severely cross-examined both by Attorney Shipman and by the Referee.

If what is found on pages 4 and 5 by the Master was true, or any inference of truth could be drawn from it, either the report of the original referee, Turnbull, or the acceptance of the present Master of this finding, and all

of it appeared before the master as the truth and sufficient upon which to make a finding against the discharge of the bankrupt, Joseph H. Grande, then either Joseph H. Grande should be indicted and prosecuted or else the United States District Attorney should investigate those who are appearing in objection to the discharge of Joseph H. Grande and the motive behind it.

It appears in the testimony that was offered in bulk by Shipman to the Master in this case that there was either trucks or automobiles in which Grande-California, Inc., had certain equities. The trucks were sold by the Studebaker people to Joseph H. Grande. He had made some payments upon them. The title, as is well known to everyone, was a conditional sale, reserving the title in the seller. Grande, in his report of his assets did not disclose that he had an equity in these trucks. When he was called upon to state what property he had he did not name these trucks because he did not have the legal title, but as soon as the hearing opened, then it was clearly presented to the referee the true condition, and none of the property of the bankrupt can anywhere be found to have been concealed, sold, disposed of or any way used by the bankrupt, Joseph H. Grande, to hinder or delay the payment of his creditors.

The Master in this case is not justified, and all that appeared before the Master does not justify the findings as follows:

"The testimony of the bankrupt throughout the proceedings showed an entire lack of good faith and desire on the part of the bankrupt to tell the truth about his financial affairs. For example, on page 90 of the transcript, when asked:

'Q. What was your income in 1931?
A. I don't know.'

"and on page 110 of said transcript, at line 22:

'Q. How much did you make in 1931
A. Well, I could not exactly say.
Q. Well, approximately.
A. I must have made fifteen or twenty thousand dollars.
Q. In 1931?
A. I think so.'"

And the Master concludes:

"And the record is replete with instances of similar kind."

It is a strange situation that a Master called upon to hear evidence should read what transpired upon a former hearing before a former Referee, and should pass upon the credibility of that record that was not before him as a proper procedure under the order under which he is acting herein. Such findings are indeed contrary to the instructions given to the Master to find on the specific objections—if there were specific objections upon which the Master could find.

Then the Special Master in this hearing proceeds as though he was trying this case in the Superior Court of the State of California and makes wholly unnecessary conclusions of law, not justified by any evidence regularly before him, and further on page 6, line 13, the Special Master finds "that the order of February 4, 1935, is a final order; that, by said order it has been found and adjudged and decreed that said Joseph H. Grande, the bankrupt herein, for the purpose of preventing his creditors then existing from collecting their accounts against him,

and also for the purpose of hindering and delaying and defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash, and merchandise, leases and contracts to a corporation known as Grande-California, Inc."

Then follows this statement: "That such acts took place within the period specified by Paragraph 14-B (4) of the bankruptcy Act."

This is not a section providing for certain acts done within a specified period. That section provides, as we will later show, that the bankrupt is entitled to a discharge unless he has been guilty of a criminal act for which he has been convicted, or of such gross mis-conduct that will make him of like standing with an ordinary criminal. That is what must be shown in order to deny a discharge. Moreover, if what is found and what is presented to the court as a recommendation for the denial of the discharge of Joseph H. Grande, Bankrupt, is to be considered at all, then Joseph H. Grande should have been indicted and prosecuted criminally rather than to be hounded by criminal charges against him, upon which it is well known to the parties protesting against the discharge of Grande that they could not maintain or justify in any criminal procedure, but are using this procedure to harass and annoy the bankrupt.

If Grande concealed any property, that property could be pursued when the discovery of its concealment was manifest, and recovered. No evidence appears in the record anywhere of any such an effort on the part of Shipman or the protesting creditors against the discharge of Grande.

What is said with respect to the Sun State Produce Company, is likewise applicable to the objections made by the Arizona Wax Paper Company, a co-partnership, as each base their objections upon practically the same ground, and only this would be found in the protest of either—that one was a co-partnership and the other was a corporation. In neither of these cases, as above stated, does the record show that anyone connected with the Arizona Wax Paper Company appeared at any one of the hearings that were had before the Special Master, and the only person appearing was the Attorney Shipman, who without authority from the other creditors was acting alone as attorney for the Trustee in this special proceeding.

Mrs. Joseph H. Grande, a daughter, Hazel Grande, a son, Robert Grande, have been from 1934 up to the hearing on this matter, pursued by secret investigations, to see perchance if anywhere there could be found anything that would look crooked, upon which the protestants in this case, and the representative of the protestants could hang their hat.

We appeal from the findings in each of these protests to the Judge of the United States District Court before whom this case is regularly on his calendar—the Honorable William P. James, and call the attention of the Master and the court to the law applicable to this procedure as laid down by Collier in his 13th edition.

In Colliers Bankruptcy Procedure, 13th Edition, Vol. 1, Sec. 14, page 493, this section is construed in 250 Fed. 1005, and in 96 Fed. 468, the court says:

"No other creditor can file, nor one filing can speak for the others; each protesting must file specific objections and he can speak for himself alone."

Construing this section in 248 Fed. 115, the court said:

"The Trustee could not appear as a protestant against the discharge of the bankrupt, unless authorized by all of the creditors."

Taking this as a basis, we call the attention of the court to this fact, that if the trustee could not appear, except by a vote of the majority of the creditors, as protestant, then surely his attorney could not appear, except after the Trustee had obtained the authority from the creditors so to do. One creditor alone cannot, nor two creditors could not authorize the trustee to appear as a protestant against the discharge of a bankrupt. That being true, then surely his attorney has no right or authority to appear as such, nor can he appear as attorney for one of the creditors until he has been relieved and discharged as attorney for the Trustee, which is not true so far as Shipman is concerned in this case. See 248 Fed. 115.

The attention of the court is called to the form of the protest against the discharge for the reason that it must be of that clearness that a practical form is provided and recognized by the highest standard of authority on bankruptcy. On page 2548, Colliers 13th Edition, Vol. 3, form No. 326, is that form which is used in making protests against the discharge of bankrupts, and the necessity for specific charges is fully discussed in 140 Fed. 222 and 173 Fed. 484.

On page 498 of Vol. 1, Colliers 13th Edition, Sec. 14-b (4), it reads:

"Allegations sufficient to show that all essential facts existing bring the opposition within the grounds specified by the statute, * * * they should be pleaded with

greater particularity than complaints in civil actions; indeed, they more nearly resemble indictments." 93 Fed. 440.

"Mere general averments are not sufficient." 140 Fed. 222, 197 Fed. 648.

Mere conclusions of law and alternative general averments are not sufficient, nor allegations based on information and belief.

"Referee as Master should not base a finding upon original examination of the bankrupt before him as a referee.

Applying this rule of law, the Master, Dickson, had no right or authority to take what appeared to have been given by Referee, Turnbull, and adopt it as evidence in this case upon which to make his finding.

"Neither should the new Master use the record of the Referee upon which to base his findings." 162 Fed. 983.

"Special Master should not report upon questions presented by the specification of objection to a discharge without having examined and heard the testimony. For the presence of the witnesses in a contested controversy is vital to the proper determination."

We further call the attention of the United States District Court in our appeal from the rulings and findings of the Master, and assign as error the failure of the Master to follow the rules of evidence and the rules of law governing in cases of the instant character. Following, in Section 14 of Colliers above quoted, under the set of rules of evidence, proof required, this rule is laid down:

"The ordinary rules of evidence control. Evidence will be confined to the specifications and objections." 268 Fed. 1006.

"The burden of proof is upon the opposing creditor." Page 511, Vol. 1, Sec. 14 F. (3).

Then the following subdivisions must be established by the protesting creditor:

1. Concealment of assets must be specifically charged and proven.

2. Evidence of false oath must be clearly charged and proved, as in any other case. If the charge of purjury is made it must be supported by additional circumstances and one witness. Suspicious circumstances will not justify opposing the discharge of a bankrupt.

Page 520, Vol. 1-B. Commission of a crime other than those mentioned in Section 29 are not grounds for denial of bankrupt's discharge.

The policy of the law is to carry out the spirit of the Bankruptcy Act. In doing so—in denying the discharge of a bankrupt on grounds as is presented here, then the bankruptcy procedure would become a useless act to relieve persons of unfortunate financial conditions and give them an opportunity to begin anew. Or, in other words, before one who has either been forced into bankruptcy or one who voluntarily enters bankruptcy, something more must be presented than mere suspicion or a desire to annoy, or a desire to intimidate and attempt to coerce a bankrupt, and then demand impossible situations from him.

The charges must always be specific and they must be of that specific character that they are of sufficient legal force to indict and prosecute the individual under the different Sections of the bankruptcy Act, but unless a criminal act can be based upon allegations, it is little less than reprehensible for a creditor or his attorney to file a protest against his discharge, when at the time of the filing of the protest it is a well known fact that it is only to harass and annoy rather than to benefit the creditors.

Upon the foregoing statement we appeal and assign as error the different points that we have made and ask the Special Master to point out the evidence upon which he based his conclusion and to report to the court the fact that there was no witness appearing before the court to support any charges made by either of the creditors opposing the discharge of the bankrupt, so that the District Court and the Judge be*o*f*r*e whom this matter is to be reviewed may know what was before the Master, and upon what he based his conclusions.

Respectfully submitted,

James Donovan

Attorney for Bankrupt.

Helena, Mont
Aug 13- 36

[Endorsed]: Filed R. S. Zimmerman Clerk at 35 min. past 4 o'clock Aug. 17, 1936 P. M. By R. B. Clifton Deputy Clerk.

ORDER DENYING DISCHARGE

At a stated term, to wit: The September Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 15th day of September in the year of our Lord one thousand nine hundred and thirty-six

Present:

The Honorable Wm P. James, District Judge.

In the Matter of)
JOSEPH H. GRANDE,) No. 24154-Bank.
Bankrupt.)

Heretofore the bankrupt, Joseph H. Grande, petitioned for his discharge, to which objections were made by certain creditors, to-wit: Arizona Wax Paper Company and Sun State Produce Exchange. The hearing on said objections was referred to the referee in bankruptcy, who after full hearing thereof, reported to the Court recommending that the objections be sustained and the discharge denied; and thereafter the bankrupt having presented his objections to the report of the referee, which objections were argued before the Court and submitted on memoranda of authorities. And now the Court having carefully examined the record and considered the objections of the creditors as aforesaid, determines that the conclusion of the referee sitting as special master should be adopted: IT IS THEREFORE ORDERED that the objections of the bankrupt to the report of the referee and special master be and they are overruled and the petition for discharge is denied. An exception is noted in favor of the bankrupt.

[Title of Court and Cause.]

APPEAL OF BANKRUPT

TO: HONORABLE WILLIAM P. JAMES, JUDGE OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

The above named bankrupt, JOSEPH H. GRANDE, conceiving himself aggrieved by the Order and Decree of the Court made on the 15th day of September, 1936, in the above entitled cause does hereby APPEAL from said Order and Decree to the Circuit Court of Appeals, Ninth Circuit, for the reasons specified in the assignment of error which is filed herewith and PRAYS that this Appeal may be allowed and that a transcript of the record, proceedings and papers upon which said Decree was made, which said transcript of the record, or so much thereof as is desired on said appeal, duly authenticated, may be sent to the United States Circuit Court of Appeals, Ninth Circuit.

James Donovan
James Donovan
Attorney and Solicitor for Joseph H. Grande, Bankrupt.

The foregoing Appeal is allowed.

Dated: 14th day of October, 1936.

Wm P. James
DISTRICT JUDGE

[Endorsed]: Filed R. S. Zimmerman, Clerk at 57 min. past 9 o'clock Oct. 14 1936 A. M. By R. B. Clifton Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

IN THE MATTER OF)	In Bankruptcy No. 24154-J
)	
JOSEPH H. GRANDE)	ASSIGNMENT OF
)	ERRORS
Bankrupt)	

1.

The COURT erred in ordering a reference to Hugh L. Dickson, Referee in Bankruptcy, on December 2, 1935, on the following grounds:

A. That the Arizona Wax Paper Company and State Produce Exchange were the only creditors who filed objections to the discharge of Joseph H. Grande, Bankrupt.

B. That Benjamin W. Shipman is and was at all times since the Trustee in Bankruptcy was named attorney for the Trustee, William I. Heffron.

C. That said Shipman filed each of these claims as attorney for creditor before the Referee in Bankruptcy, as attorney for said creditor.

D. That on December 2, 1935, said Shipman filed each of these protests against the discharge of the bankrupt as attorney for each of said protesting creditors and verified one of the protests.

E. That there is no specific allegation in either of said protests of the Arizona Wax Paper Company or State Produce Exchange sufficient to justify the Court to refer the same to a Referee.

11.

That the Court erred in sustaining the report of the Referee in Bankruptcy, Hugh L. Dickson, in this:

A. The report shows that the Referee adopted a certain finding of his predecessor of date of February 4, 1935, without any evidence being offered covering the subject matter of said report of February 4, 1935 of his predecessor, Referee Turnbull, without giving the Bankrupt an opportunity to have investigated by Referee Dickson, the facts upon which the report of Referee Turnbull was made on February 4, 1935.

111.

The Court erred in sustaining the Referee's Report when there was no specific charge upon which the Master would be authorized under Section 14-b (4) of the Bankruptcy Act to act.

The Court erred in sustaining the Master's Report in this:

A. When the objection to the ground upon which the protests were made was not specifically charged.

B. In sustaining the Special Master's report in reciting what his predecessor, Turnbull, as referee found in the case, for no specific charge is made upon which this finding of Referee Turnbull could be predicated.

C. In sustaining the Special Master's finding as follows: "Then this Master further finds: "It was found that, within eleven months prior to the filing of the voluntary petition in bankruptcy, the bankrupt herein transferred, assigned and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to said corporation, Grande-California, Inc. That, at said time,

said bankrupt had many and extensive debts and at least one judgment against him". This quotation discloses that instead of the Special Master hearing evidence and making his own findings, as directed by the Court, without any evidence he adopted the above quotation as a part of the finding of his predecessor, Turnbull.

D. There was no evidence offered before the Special Master to sustain the quotation of his predecessor as a part of his duty as such Special Master.

E. It was not within the jurisdiction of the Special Master to review the report of his predecessor. He was not called upon for such purpose and it was not within his jurisdiction.

IV.

The Court erred in sustaining the Referee's Report in this:

A. There was no evidence offered, or any witnesses called on behalf of the protestants. The only person present representing the hearings before the Special Master was Attorney *Shipment* who offered no evidence to sustain the specific charges in the protests.

V.

The Court erred in sustaining the Referee's Report in this:

A. In reviewing the former findings of Referee Turnbull the Special Master quoted the following:

"It was further found in said proceedings, (referring to the proceedings in bankruptcy), in which said findings and order have become final, that said corporation, to-wit: Grande-Californina, Inc., was caused to come into being

and to exist for the sole purpose of permitting the said bankrupt to do business without being hindered by his creditors,"

The Special Master further found, quoting from findings of Referee Turnbull:

"It was further the conclusion of the court from the facts and the evidence that said Grande-California, Inc., was the alter ego of Joseph H. Grande".

Quoting again from the findings of Referee Turnbull, the Special Master quotes:

"The aforesaid findings and order were introduced in evidence, together with the file appertaining to the above entitled case".

VI.

The Court erred in sustaining the Referee's Report in this:

A. The report of Special Master, Dickson, as the evidence or the facts upon which the Special Master drew his conclusions was not before the Court and the record that was before the Court disclosed that there was no independent investigation made by the Special Master upon which to base his findings.

B. The Special Master used this language in one of his findings:

"The testimony of the bankrupt throughout the proceedings showed an entire lack of good faith and desire on the part of the bankrupt to tell the truth about his financial affairs. Etc"

C. The Special Master was not called to review the action of his predecessor, Turnbull, or to in anywise pass judgment upon the conclusions reached by the Referee Turnbull.

V11.

The Court erred in sustaining the Referee's Report in this:

A. The erroneous conception of the Special Master as to what his duties were and to his appointment.

B. The Special Master assumed that he should pass upon the credibility of the record of his predecessor as a proper procedure under the order under which he was acting.

C. It was not the duty of the Special Master to determine whether the order made by Turnbull on February 4, 1935, was a final order.

V111.

The Court erred in sustaining the Referee's Report in this:

A. In sustaining the report of the Special Master when the record does not disclose there was any evidence offered or before the Special Master to sustain the allegations in the protests for discharge showing, or tending to show, that any automobile, cash, merchandise, leases or contracts, or any one or all of them, were concealed, converted to, or hidden from the Trustee or that any such property mentioned ever existed at all which could be diverted from the Trustee.

IX.

The Court erred in passing upon the Appeal from the Special Master in ignoring the law applicable to the procedure in this case.

A. In Colliers Bankruptcy Procedure, 13th Edition, Vol. 1, Sec. 14, Page 493, construed in 250 Fed. 1005 and in 96 Fed. 468 the Court said:

"No other creditor can file, nor can one filing *can* speak for the others; each protesting must file specific objections and he can speak for himself alone".

In construing this section in 248 Fed. 115, the court said:

"The Trustee could not appear as a protestant against the discharge of the bankrupt, unless authorized by all of the creditors".

B. In permitting Benjamin W. Shipman to appear in behalf of protestants as their attorney when he was still of record as the attorney for the Trustee.

X.

The Court erred in not following the rule of law announced on Page 2548, Colliers 13th Edition, Vol. 3, form No. 326, which is construed in 140 Fed. 222 and 173 Fed. 484 in which the form of protest to the discharge of the bankrupt is pointed out and the necessity for specific charges. On Page 498 Volume 1, Colliers 13th Edition, Section 14-b (4) it reads:

"Allegations sufficient to show that all essential facts existing bring the opposition within the grounds specified by the statute, * * * they should be pleaded with greater

particularity than complaints in civil actions; indeed, they more nearly resemble indictments." 93 Fed. 440.

"More general averments are not sufficient." 140 Fed. 222, 197 Fed. 648.

"Referee as Master should not base a finding upon original examination of the bankrupt before him as a referee".

X1.

The Court erred in sustaining the report of Special Master Dickson wherein it is shown that Special Master adopted as evidence in this case the findings made by the Referee, Turnbull, on February 4, 1935.

"Neither should the new Master use the record of the Referee upon which to base his findings". 162 Fed. 983. And the

"Special Master should not report upon questions presented by the specifications of objections to a discharge without having examined and heard the testimony. For the presence of the witnesses in a contested controversy is vital to the proper determination."

X11.

The Court erred in failing to follow Section 14 of Colliers as above quoted, under the set of rules of evidence, proof required, this rule is laid down:

"The ordinary rules of evidence control. Evidence will be confined to the specifications and objections". 268 Fed. 1006.

"The burden of proof is upon the opposing creditor." Page 511, Vol. 1, Sec. 14 (3).

Then the following subdivisions must be established by the protesting creditor:

1. Concealment of assets must be specifically charged and proven.

2. Evidence of false oath must be clearly charged and proven, as in any other case. If the charge of perjury is made it must be supported by additional circumstances and one witness. Suspicious circumstances will not justify opposing the discharge of a bankrupt.

3. Page 520, Vol. 1-B. Commission of a crime other than those mentioned in Section 29 are not grounds for denial of bankrupt's discharge.

Upon the foregoing Assignments of Error we ASK that the APPEAL be sustained and the Decision of the District Court be reversed.

RESPECTFULLY SUBMITTED,

James Donovan
Attorney for Bankrupt, Joseph H. Grande.

October 14-'36

[Endorsed]: Filed R. S. Zimmerman Clerk at 56 min. past 9 o'clock Oct. 14, 1936 A. M. By R. B. Clifton, Deputy Clerk.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND DIRECTING SAME TO BE FILED.

THIS day came the Bankrupt, Joseph H. Grande, by James Donovan, his attorney, and presented his Petition for Appeal and his Assignment of Errors, and upon consideration thereof,

IT IS HEREBY ORDERED AND ADJUDGED that said petition and assignment of errors be and the same are hereby filed, and that the Petition for Appeal be and the same is hereby allowed to be reviewed by the Circuit Court of Appeals of the Ninth Circuit Court upon the appellant, Joseph H. Grande, bankrupt, executing a bond according to law in the sum of $250.00.

Dated this 14th day of October, 1936.

Wm. P. James
DISTRICT JUDGE.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 56 min. past 9 o'clock, Oct. 14 1936 A. M. By R. B. Clifton, Deputy Clerk.

[Title of Court and Cause.]

UNDERTAKING

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Daisy M. Grande, Harry T. Hughes are held and firmly bound unto ARIZONA WAX PAPER COMPANY and STATE PRODUCE EXCHANGE in the full and just sum of TWO HUNDRED AND FIFTY DOLLARS ($250.00), to be paid to the said Arizona Wax Paper Company and State Produce Exchange, heirs, executors, administrators, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors, or assigns, jointly and severally by these presents.

Sealed with our seals and dated this 27th day of October, in the year of our Lord one thousand nine hundred and thirty-six.

WHEREAS lately on the 15th day of September, 1936, in the District Court of the United States, Southern District of California, Central Division in a suit pending in said court wherein Joseph H. Grande, bankrupt, is appellant and Arizona Wax Paper Company and State Produce Exchange were respondents, an Order and Decree of the Court was rendered against the said Joseph H. Grande, bankrupt, and the said appellant in the aforesaid suit, and a citation directed to the said respondents, Arizona Wax Paper Company and State Produce Exchange citing and admonishing said Arizona Wax Paper Company and State Produce Exchange to be and appear in the United States Circuit Court of *Appeal* for the Ninth Circuit, at the City of San Francisco, in the State of California, on the 12th day of November, A. D. 1936.

NOW, the condition of the above obligation is such that if the said Joseph H. Grande, bankrupt, appellant shall prosecute said appeal to effect, and answer all damages and costs if Arizona Wax Paper Company and State Produce Exchange fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

Sealed and delivered in the presence of

Daisy M. Grande
Henry T. Hughes

Approved by:
Wm. P. James
Judge

STATE OF CALIFORNIA)
: ss
County of Los Angeles)

HARRY T. HUGHES surety in the within undertaking, being duly sworn, says that he is worth the sum specified in the said undertaking over and above all his just debts and liabilities (exclusive of property exempt from execution) and that he is a resident within the State of California, and a property holder, therein.

Henry T. Hughes

Subscribed and sworn to before me this 29th day of October, 1936.

[Seal] June Eddy
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Nov. 4, 1936

Examined and recommended for approval as provided in Rule 28

James Donovan
Attorney

I hereby approve the foregoing bond

Dated the 30 day of Oct 1936

Wm P James
Judge

STATE OF CALIFORNIA, } ss.
County of Monterey }

Daisy M. Grande being by me first duly sworn, deposes and says: that *he* is the surety in the above entitled action; that she has read the foregoing appeal bond and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

Daisy M Grande

Subscribed, and sworn to before me this 27th day of October 1936

[Seal] Walter E Morris
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 34 min. past 4 o'clock Oct. 30, 1936 P. M. By F. Betz, Deputy Clerk

[Title of Court and Cause.]

PRAECIPE

TO THE CLERK:

You are requested to make a transcript of records to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Findings of February 4, 1935

2. Motion and order to show cause why the Referee should not certify to the court the transcript of his proceedings in support of the findings of February 4th, 1935

3. Denial of motion to show cause of February 27, 1935

4. Referee's certificate of compliance, dated September 23, 1935 .

5. Bankrupt's petition for discharge of October 8, 1935

6. Affidavit of publication and order of hearing thereon of December 2, 1935

7. Protest filed by Benjamin W. Shipman, attorney for the Arizona Wax Paper Company of December 2, 1935

8. Minutes of the court of December 2, 1935

9. Special Master's report.

10. Notice of filing of Special Master's report

11. Petition for review to the District Court of the Special Master's report

12. Ruling of the court on the petition for review of Special Master's report

13. Petition for appeal to the Circuit Court

14. Order allowing appeal

15. Assignment of errors.

16. Citation

17. Appeal bond

18. Praecipe for transcript on appeal to Circuit Court.

Dated this 2nd day of December, 1936.

James Donovan
Attorney for Joseph H. Grande,
Bankrupt and Appellant

[Endorsed]: Received copy of the within Praecipe this 2nd day of December 1936 B W Shipman, attorney for Objecting Creditors Filed R. S. Zimmerman, Clerk at 11 min. past 3 o'clock Dec. 2 1936 P. M. By F. Betz, Deputy Clerk.

[Title of Court and Cause.]

APPELLEES' PRAECIPE

To: the Clerk of the United States District Court, for the Southern District of California, Central Division:

In making up the transcript of record for the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, you will please incorporate the following additional portions of the record not appearing to have been requested by the appellant herein:

1. Findings and Order by Referee Rupert B. Turnbull, dated February 4, 1935;

2. Opinion and Order by Hon. Wm. P. James, District Judge, dated February 27, 1935.

Dated: November 23rd, 1936.

Benj. W. Shipman
Attorney for Objecting Creditors.

[Endorsed]: Received copy of the within Appellees' Praecipe this 24 day of November 1936 James Donovan, attorney for appellant. Filed R. S. Zimmerman Clerk at 13 min. past 4 o'clock Nov. 24, 1936 P. M. By R. B. Clifton, Deputy Clerk.

[Title of Court and Cause.]

APPELLEE'S PRAECIPE

To: the Clerk of the United States District Court, for the Southern District of California, Central Division:

In making up the transcript of record for the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, you will please incorporate the following additional portions of the record not appearing to have been requested by the appellant herein:

1. Specifications of Grounds of Opposition to Bankrupt's Discharge of Arizona Wax Paper Company;

2. Specifications of Grounds of Opposition to Bankrupt's Discharge of Sun State Produce Exchange.

Dated: December 8, 1936.

Benj. W. Shipman
Attorney for Objecting Creditors

I object to that portion of the appellees' praecipe No. 2, "Specifications of grounds of opposition to bankrupt's discharge of Sun State Produce Exchange," for the reason that said objections were not filed until 4:30 o'clock P. M. on the 2nd day of December, 1935, as appears from the minutes of the court's record on said 2nd day of December, 1935.

Dated this 10th day of December, 1936.

James Donovan
Attorney for Bankrupt

The above additional portions of the record are ordered included and an exception is noted in favor of the bankrupt.

Wm. P. James
Dist. Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 13 min. past 4 o'clock Dec 8 1936 P. M. by R. B. Clifton, Deputy Clerk.

[Title of Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 79 pages, numbered from 1 to 79 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; findings and order; motion and order to show cause; opinion and order on petition of bankrupt for extension of time to file petition for review of Referee's order; Referee's certificate of compliance; bankrupt's petition for discharge and order thereon; affidavit of publication; specifications of grounds of opposition to bankrupt's discharge of Arizona Wax Paper Co.; specifications of grounds of opposition to bankrupt's discharge of Sun State Produce Exchange; order referring objections to Special Master; report of Referee as Special Master on creditors' objections to bankrupt's petition for discharge; notice of filing of Special Master's report; exceptions to report of Special Master; order denying discharge; appeal of bankrupt; assignment of errors; order allowing appeal; undertaking on appeal; praecipe; appellee's praecipe and additional praecipe of appellee.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is $ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this ..... day of December, in the year of Our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

R. S. ZIMMERMAN,
Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.